IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2760 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
AND
HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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LABHUBEN KUMARBHAI JADAV & 3 - Appellant(s)
Versus
KALABHAI MANGABHAI THAKOR & 3 - Defendant(s)

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Appearance :
MR SANDIP C SHAH for Appellant(s) : 1 - 4.
NOTICE SERVED for Defendant(s) : 1 - 2.
MS MEGHA JANI for Defendant(s) : 3,
MR JV JAPEE for Defendant(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH
and
HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 20/02/2007
ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE AKIL KURESHI)

This appeal arises out of a judgment and award dated 30.11.1999 passed by the Motor Accident Claims Tribunal (Aux.), Ahmedabad in Claim Petition No. 172 of 1997.

2. On 4.5.1991, when one Kumarbhai Jadav was travelling in a Fiat car going from Ahmedabad to Ambaji, the car met with an accident near Baval Kothia village. The car dashed against an incoming truck. In the ensuing impact, Kumarbhai who was sitting on the front seat of the car received fatal injuries. Apparently, the driver of the car also died in the said accident. Two more persons travelling in the same car also received bodily injuries.

3. For the death of Kumarbhai, his widow, minor children and aged parents filed Claim Petition No. 172 of 1997 seeking compensation of Rs.25,20,000/- from the driver, owner and insurer of the truck involved in the accident.

4. While disposing of the claim petition alongwith other claim petitions arising out of the same accident, the Claims Tribunal came to the conclusion that the accident occurred on account of sole negligence of the truck driver. To this aspect of the matter, we may not go into any detail since the Insurance Company of the truck has not challenged the judgment and award passed by the Claims Tribunal. Qua the Insurance Company, therefore, the question of

negligence has attained finality. It may also be noted that in the appeal filed by the claimants also, the Insurance Company has not filed any cross objections disputing the finding of the Claims Tribunal that the driver of the truck was solely negligent in causing the accident.

5. In the present appeal, the claimants have sought enhancement of the compensation awarded by the Claims Tribunal. Before the Tribunal, evidence was led to establish that the deceased was employed as a Branch Manager in a co-operative bank and that his monthly salary was approximately Rs.9,000/-. The claimants had also led oral as well as documentary evident to establish before the Tribunal that on the date of deposition i.e. in the year 1998, a Branch Manager was being paid salary of approximately Rs.17,000/- per month.

The Tribunal, however, recorded that both the sides have agreed to accept the income of the deceased at Rs.8,800/- per month for considering the dependency loss. One-third of the said sum was deducted by the Tribunal for the personal expenses of the deceased. The Tribunal thus assessed the loss of dependency benefits to the claimants at Rs.5,867/- per month or Rs.70,404/- per annum. The Tribunal adopted the multiplier of 15 and worked out the dependency benefit for the family at Rs.10,56,060/- (i.e. Rs.70,404 x 15). To this, the Tribunal added a sum of Rs.10,000/- for loss of expectation of life

and Rs.10,000/- for loss of consortium. In all, the Tribunal awarded a sum of Rs.10,76,060/- to be recovered with 12% interest from the date of the claim petition till realization.

6. Before us, learned advocate Mr Sandip C Shah appearing for the claimants submitted that the Tribunal gravely erred in accepting the prospective income of the deceased at Rs.8,800/- per month. He submitted that there was no agreement before the Tribunal on behalf of the claimants and in any case the Tribunal ought to have take into account the future prospective increase in the income of the deceased. He submitted that there was evidence to suggest that in addition to receiving salary income, the deceased was also earning substantial income from agricultural activities.

The learned advocate submitted that there was evidence in form of salary slips of the deceased shortly before he met with the unfortunate accident as well as of a co-employee who, on the date of deposition before the Tribunal, was shown to have been earning Rs.17,000/- per month occupying the same post of Branch Manager. He submitted that the wife of the deceased had established before the Tribunal that her parents owned considerable amount of agricultural land from which also the deceased was earning substantial income.

7. On the other hand, learned advocate Ms Megha Jani with Mr Chirayu Mehta for opponent No.3 – Oriental Insurance Co. Ltd. i.e. the Insurance Company of the truck involved in the accident submitted that the award passed by the Tribunal calls for no interference. He submitted that the assessment of income of the deceased is just and proper and the same was agreed to by the advocate of the claimants before the Claims Tribunal as recorded in the impugned judgment. If at all, the choice of multiplier is on the higher side since the deceased was aged 44 years on the date of the accident.

8. Having heard the learned advocates appearing for the parties, we find that even if on behalf of the claimants there was any suggestion made before the Claims Tribunal to accept the income of the deceased at Rs.8,800/- per month, the same could not have been utilized for assessing the dependency benefits for the claimants for passing ultimate award. From the evidence on record, particularly the salary slip of the deceased shortly before his death (Exh.32) it is established that he was drawing a gross salary of approximately Rs.8,800/- per month. In addition thereto, the claimants had also examined an officer of the bank one Shri Harshadbhai Jaswantlal Shah at Exh.33 who had stated that the deceased had joined the bank as an accountant in the year 1974 and had received periodical promotions and on the date of the accident he was working as a Manager. He had further stated that if the deceased

had survived, his monthly salary would have been Rs.17,684/-. He also produced at Exh.46 a pay certificate of another employee occupying the post of Manager who was appointed by the bank almost simultaneously with deceased Kumarbhai.

The claimants also examined the widow of the deceased at Exh.19. She also stated regarding the income of the deceased at the time of his death and sought to further suggest that he was also supervising the agricultural operations on the agricultural lands belonging to her parents.

9. From the evidence on record, we find that the Claims Tribunal erred in assessing the dependency benefits to the family at Rs.8,800/- per month. In fact, that was the salary of the deceased on the date of the accident itself. He had the seniority of more than 15 years having been appointed in the bank in the year 1974. Having started the position as an accountant, he had with passage of time reached the position of Manager of the bank. There was documentary evidence to suggest that he was drawing a monthly salary of about Rs.8,800/-. In addition thereto, the claimants had also demonstrated before the Tribunal that the deceased had every possibility of earning higher income since there were periodical pay revisions and settlement implemented by the bank. The claimants had produced documentary evidence to establish that on the date of deposition in the year 1998, the co-employee of the deceased reached monthly

salary of Rs,17,800/-. Considering all these aspects of the matter, we find that the dependency benefits to the family could not have been assessed on the flat income of the deceased at Rs.8,800/- per month which was his salary on the date of the accident.

We are, however, not convinced by the suggestion of the claimants that the deceased was also earning substantial income from agricultural operations. There was no concrete evidence on record to establish this aspect of the matter. Neither any documentary evidence was produced in this regard nor was any income-tax return of the deceased exhibited before the Tribunal to show that in addition to his salary income, he was also earning further income from agricultural operations.

10. Admittedly, the deceased was not the owner of the land and the land was situated at a considerable distance from the work place of the deceased. Considering all these aspects of the matter and taking into consideration the income of the deceased on the date of the accident and raising future income as evident from the oral as well as documentary evidence noted hereinabove, we are of the view that the monthly dependency benefits for the claimants can be worked out on the basis of the income of the deceased at Rs.13,500/- per month. Applying the normal formula of one-third deduction for the personal expenses of the deceased himself and, therefore, reducing it by a sum of Rs.4,500/-,

the monthly dependency benefits for the family would be worked out at Rs.9,000/- per month or Rs.1,08,000/- per annum.

11. Admittedly the deceased was aged 44 years on the date of the accident. Multiplier of 15, therefore, was on the higher side. Considering that he had approximately another 15 years or so of service left, the multiplier of 15 was not justified. Considering the facts and circumstances of the case and even after considering his post retirement enjoyment in agriculture, multiplier of 12 would be justified.

12. In the result, the claimants should receive Rs.12,96,000/- towards dependency benefits (i.e. Rs.1,08,000 x 12). To this, we may add Rs.25,000/- for loss to the estate, Rs.15,000/- for loss of consortium and Rs.5,000/- for funeral expenses. The claimants would, therefore, be entitled to a total compensation of Rs.13,41,000/-. Since the Tribunal has already awarded Rs.10,76,060/- by way of compensation, the claimants would receive further compensation of Rs.2,64,940/-. The additional compensation shall be paid with proportionate costs and simple interest at the rate of 9% per annum from the date of claim petition till actual payment.

The additional compensation shall be deposited by opponent No.3 – Insurance Company before the Claims Tribunal by 15th April 2007. It may be

noted that during pendency of the claim petition, the mother of the deceased had expired. By now, his children have also attained majority. Considering these aspects of the matter, it is provided that upon such deposit, the Claims Tribunal shall apportion the additional compensation in the ratio of 80 : 20 in favour of appellant No. 1 (widow of the deceased) and appellant No.4 (father of the deceased). Out of the amount payable to appellant No.1 (widow of the deceased), 10% shall be disbursed in her favour through an account payee cheque. Out of the amount payable to appellant No.4 (father of the deceased), 50% of the amount shall be disbursed to him through an account payee cheque.

The remaining amounts be deposited by the Claims Tribunal in fixed deposits in any nationalized bank near the residence of the claimants for a period of three years, with usual conditions about prohibition against premature encashment of/encumbrance over the deposits, with permission to the claimants to withdraw interest periodically accruing on the fixed deposits and with a direction to the bank not to permit the accounts to be operated by any power of attorney holder other than a close relative of the claimants.

13. With these directions, the appeal is allowed in part and disposed of accordingly.

[M.S. SHAH, J.] [AKIL KURESHI, J.]

sundar/-